



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: A463/2013

23/6/2015

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
 (3) REVISED

17/6/15

DATE

SIGNATURE

In the matter between:

BENNY RAMOKGOLA

Appellant

and

THE STATE

Respondent

Heard: 30 April 2015

Delivered:

JUDGMENT

A.A.LOUW J

Introduction

[1] The appellant (accused 1) was convicted together with Tricia Alfred in the Regional Court at Musina on 11 October 2012. He was convicted on a charge of corruption for contravening section 4(1)(a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 – Accepting a Benefit.

[2] The appellant (accused 1) was sentenced together with Tricia Alfred on the same date to five years' imprisonment of which two years were suspended for five years on condition that he is not convicted of corruption during the period of suspension.

[3] The appellant was legally represented throughout the trial.

[4] The appellant was refused leave to appeal against the conviction and sentence by the court a quo on 12 October 2012.

[5] The appellant's petition to this Court was however successful and on 7 February 2013 he was granted leave to appeal against the conviction and sentence.

[6] It is alleged that the appellant and Tricia Alfred committed the crime of corruption in that they accepted R1 000-00 (paid to the appellant on 27 December 2010) from Willie Boltman.

[7] The benefit, (which was not legally due to them), was accepted with the intention that they would then not impose a penalty to Willie Boltman for contravention of the Customs and Excise Act.

Conviction

[8] The state's case was based on the evidence of Alex Masia (Team Commander of SARS), the complainant Willie Boltman, Cornelia Smith (Clearing Agent at Beitbridge border) and Jan Kidson (Anti-Corruption Unit of SARS).

[9] This appeal does not need a lengthy judgment as the appellant's co-accused, Tricia Alfred, on substantially the same facts, succeeded in her appeal.

[10] The appeal of Tricia Alfred was heard by Pretorius J and judgment given on 1 August 2014 which upheld the appeal and set the conviction and sentence aside.

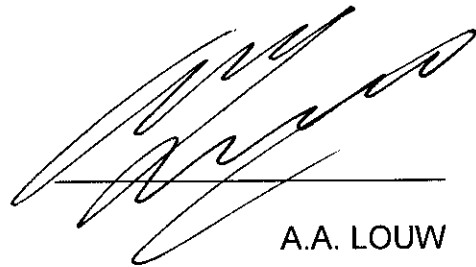
[11] Ms Groenewald for the state appeared in the lastmentioned appeal before us and also appeared in this appeal. After some argument she eventually conceded that the appeal has to succeed. Why this was not done in the first place, is beyond me. Instead she saw it fit to draft approximately 50 pages of argument in support of the decision of the court a quo. This simply increased the burden of this court. The duty of a public prosecutor is not to defend an appeal, neither to get a conviction at all cost.

[12] The main points which she conceded were the following: there were contradictions between the written statements of the two most important witnesses, Smith and Boltman, and their *viva voce* evidence. Furthermore they also contradicted each other. She further could give no explanation why the two passengers in Boltman's vehicle were not called to testify about the handing over of the bribe. In Boltman's vehicle was also his son as well as an engineer. If any bribe had been handed over they could have given crucial evidence to substantiate this.

[13] To summarise: all-in-all there are such contradictions that the appellant has to be given the benefit of the doubt.

[14] In my view the appeal should succeed and I therefore propose the following order:

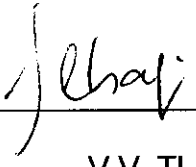
1. The appeal is upheld.
2. The conviction and sentence are set aside.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above a horizontal line.

A.A. LOUW

Judge of the High Court

I agree


V.V. TLHAPI

Judge of the High Court

For the Appellant	:	Mr Ramokgola
Instructed by	:	Pretoria Justice Centre
For the First Respondent	:	Adv. Groenewald
Instructed by	:	The DPP